

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL S. JENSEN,

Defendant.

3:06-CR-00049-LRH-RAM

ORDER

Before the court is Defendant Paul Jensen's Petition for Writ of Audita Querela (#83¹). In his petition, Jensen asks this court to resentence him in light of events occurring after this court imposed a split sentence of four months incarceration and four months home confinement.

Because the writ of *audita querela* cannot provide the relief Jensen requests, the court denies his petition.

"Audita querela was a common law writ issued to afford relief to a judgment debtor against a judgment or execution because of some defense or discharge arising subsequent to the rendition of the judgment or the issue of the execution." *United States v. Hovsepian*, 359 F.3d 1144, 1154 (9th Cir. 2004) (en banc) (internal quotation marks omitted). In current criminal practice, *audita querela* is available in cases where "a defendant has a legal defense or discharge to the underlying

¹Refers to the court's docket entry number.

1 judgment.” *Doe v. INS*, 120 F.3d 200, 204 (9th Cir. 1997). Nevertheless, *audita querela* is
2 significantly limited by its role as gap filler in the current system of postconviction relief. *See*
3 *Carrington v. United States*, 503 F.3d 888, 890 (9th Cir. 2007). Specifically, *audita querela* does
4 not provide relief available under 28 U.S.C. § 2255 or the writ of *coram nobis*. *See United States v.*
5 *Valdez-Pacheco*, 237 F.3d 1077, 1080 (9th Cir. 2001); *Doe*, 120 F.3d at 204 & n.5. *Audita querela*
6 is also unavailable on purely equitable grounds.² *Doe*, 120 F.3d at 204.

7 Turning now to the grounds for relief asserted in Jensen’s petition, Jensen argues that this
8 court would have sentenced him more favorably had it known of two factual developments that
9 occurred after his sentencing. The first of these developments is the government’s use of his
10 testimony in a prosecution in the Western District of Washington, which resulted in a guilty plea, a
11 prison sentence of 54 months, and a court order to pay more than \$11 million in restitution. The
12 second development is the scheduling of formal arbitration between Jensen and his former
13 employer, which Jensen hopes will lead to his reinstatement as a commercial pilot.

14 Neither of these developments warrant issuance of the *audita querela* writ. As a initial
15 matter, Jensen makes no showing that either of these factual developments is a “a legal defense or
16 discharge to the underlying judgment.” Rather, it appears that Jensen is arguing that his felony
17 conviction is inequitable given its consequences on his former profession. As mentioned
18 previously, however, *audita querela* may not issue on purely equitable grounds.

19 Moreover, even if the grounds asserted in Jensen’s petition could somehow be couched in
20 terms of a legal defense or discharge to the underlying judgment, the court would nevertheless
21 impose the same sentence ordered at Jensen’s October 15, 2007, sentencing hearing. The court was
22 aware at sentencing that Jensen had provided assistance to the government. In fact, Jensen received
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24 ²In light of writ’s narrow applicability and the relief available through other postconviction remedies,
25 the Ninth Circuit has questioned whether the writ has continued viability as a basis for postconviction relief.
26 *Doe*, 120 F.3d at 204 & n.5.

1 a two-level downward departure under U.S. Sentencing Guidelines Manual § 5.K.1 (2000) because
2 of that assistance. The scheduling of a formal arbitration hearing also has no effect on the legality
3 of Jensen's sentence.

4 IT IS THEREFORE ORDERED that Defendant Jensen's Petition for Writ of Audita
5 Querela (#83) is DENIED.

6 IT IS SO ORDERED.

7 DATED this 5th day of May, 2009.

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11 LARRY R. HICKS
12 UNITED STATES DISTRICT JUDGE
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